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ABSTRACT

The rights and responsibilities of boards of education in restricting the availability of certain materials through school libraries are considered in this report. The document first treats the relationship between the demands of the First Amendment and parents' expectations regarding the appropriateness of certain materials for their children. Several court cases affecting the authority of a school board to review and remove materials from the school library are reviewed briefly. Following a brief exploration of the commonly held belief that certain information should be released to children only as they mature sufficiently, the document discusses "Pico v. Island Trees Union Free School District," a case in which parents sued a board of education to have books returned to library shelves. The authors recommend that school boards develop specific book procurement policies and a statement of guiding philosophy, and that these should allow citizen involvement in book removal processes. (PGD)

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Censorship---
or
Curriculum Modification?

by

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The First Amendment: Various Perspectives

Americans talk a lot, and hear a lot about the idea of free speech. Coming from a fundamental base within our culture, free speech was codified in the First Amendment to the Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Although the Amendment appears cast in a context of freedom to discuss religion and politics, it is actually much broader. It is an independent concept. It means that Americans may talk on any topic of their choosing (that is not treasonous). It does not mean that they can force an audience to listen to them; but, what pertains for speaking and listening also pertains for printing and reading. That is, an author is free to write whatever he or she wishes, with the hope that some readership may be found. This condition forces an ultimate question for professionals in the area of book selection, for libraries or for basic texts in a given curriculum: Must everything and anything which any author is willing to write and which

is willing to write and which a publisher is willing to print be made available to anyone and everyone who may wish to read it? Taken literally and answered affirmatively, that condition would seem to answer the test of freedom of speech. Anything less is some restraint. There are other kinds of restraints, too. The Amendment, then, is relative, not absolute.

When consideration is given to the origins of the Amendment, such persons as Mr. Jefferson and Mr. Madison come to mind. They fought for freedom of speech within the cultural context of their time--the eighteenth century. Social taboos and widely accepted restraints on what should be said--in various social settings--provided a set of checks and balances that were powerful restraints, but excluded from the specifics of the law. Times have changed. There is less certainty and much less agreement among speakers and authors about what, if anything, should be excluded from literature developed for a general audience. This aspect of freedom of speech, exercised by authors and publishers, poses a problem in book selection, access, and circulation for teachers and librarians, as well as for the boards of education that furnish funds to purchase the books in public schools. Many parents have some firmly set ideas about what kinds of information should be made available to their children. Those concerns are in the areas of religion, politics, sex information, and so on.

To illustrate the point of substantial latitude for authors and publishers, the literary medium is being changed from book to motion picture, from printed literature to pictorial literature. A 1981 movie is the story of four young people who represent much that is admired in American society. The two young men, attending a naval officers' training school, work hard to develop in empathy and teamwork, and have that upward mobile attitude which is a prevalent American attitude. The two young women work in a factory giving

fair labor for a dollar earned. Each of them wants to marry a promising young officer candidate. At a typical on-base social function the four meet, are introduced, and soon depart in a car belonging to one girl.

Later, parked on the beach, one couple remains in the back seat of the car. There, the girl lifts her skirt, spreads her legs, and coyly says, "Don't worry, I'll respect you in the morning!" The other couple strolls off onto the beach to find their best position in the sand. From there on, much of the movie is devoted to copulation--on the bed, on the floor, under the table, on the chair, and so on. In this graphically detailed story, any person in the audience would be pretty well informed--or misinformed--on copulation as a normal expectation of first time meeting between two young, healthy Americans. Some viewers would label the movie as prurient; some would not.

Parents of children who attended this "R" rated movie, and who desired to promote attitudes of sexual restraint with those children, might find it a difficul point to argue, because sexual exploitation was portrayed attractively as a natural event for normal young Americans, generally. Yet, there is an interest in sexual restraints--and other kinds of restraints--when parents perceive that some author has "gone too far." Some of those attempts at restraint can be seen in selected court cases arguing for controls over book selection, access, and circulation in public schools. What parents might tolerate, accept, or applaud in a movie theater they might not tolerate in schools. Some parents might even label comparable stories, available in the form of books from a school library, as contamination of the minds of schoolchildren.

Court Cases

Disagreements about selection and access and of removal of books from

library shelves have arisen between public school boards, professional staff, and school district patrons and pupils. The same can be said for some books used in various parts of the school's curriculum. To some degree these disagreements can be seen as expressions of disgust and disappointment from the populace--expressed politically--arrayed against professionals in the world of education who feel threatened, who feel that their own critical judgment about suitable books is being set aside. That central thread of disagreement over appropriateness is seldom a straightforward and simple conflict; however, with its inevitable complexities and subtleties, it is still the central thread running through disagreements about book selection for libraries or the general curriculum, and the availability of those books to school children. The following cases illustrate that point, and lead to a current position in case law. It is not always apparent when a board is involved in curriculum development or modification, a legal obligation of each board; or, when it is involved in censorship and the suppression of the freedom of speech, an illegal activity.

In Rosenberg v. NYC Board, 92 NYS 2d 344 (1949), the plaintiff argued for the removal from the public school libraries of Oliver Twist and The Merchant of Venice. Arguing that the books promoted bigotry and anti-Semitic racial hatred, the plaintiff lost his case when the New York Supreme Court could not determine that Dickens or Shakespeare had written with malice as a purpose. That court also decided that free inquiry was a part of every educational institution, and that the local board had not abused its discretion in selecting and retaining those books. This case, nearly thirty-five years old, indicates that people have had a desire to control the informational sources in schools for a long time, whether they be library books or books customarily a part of English literature.

More recently, in President's Council #25, NYC v. Community Board, 457 F2d 289 (1972), action was brought to force the local board to replace particular books that had been removed from a junior high school library because, it was alleged, the First Amendment had been violated. The plaintiffs lost and several reasons were cited, as that court set forward some clues to local boards of education. First, selection of materials was vested in the local board by law. Second, for every book collection, someone must make decisions about what is to be added or deleted. Third, minors have no unqualified First Amendment right to access all books. Fourth, boards do not have to make of a public school library a complete repository of all books in print. Finally, the same authority to approve of books surely has the power to remove books.

Minarcini v. Strongsville Schools, 451 F2d 577 (1976) began as a class action, alleging that the board had violated the First and Fourteenth Amendments. In a three-part action of disapproving some books that had been recommended by faculty, ordering some books removed from library shelves, the board also issued a resolution forbidding the use of certain books as supplemental readings for classes. The USCA, 6th, decided that the "...board's decisions in selecting the texts were not arbitrary or capricious," and did not offend procedural due process. However, the resolution forbidding the use of some books, and removal order were declared in violation of the First Amendment, a reduction of the local board's power from the earlier decision in President's Council.

In Right to Read Committee v. Chelsea Board, 454 F. Supp. 703 (1978), the Chelsea school committee voted to ban from the high school library an anthology, Males and Females Under 18, after a parental complaint of objectionable language. Claiming that its actions were within the statutory charge to oversee the school system, the board's attempt at restraint was declared an infringement

of First Amendment rights by the court. The reasons cited were: (1) The board did not claim that the book was, by statutory definition, obscene; (2) The book was selected through the normal and proper procedures; (3) There was no shortage of shelf space in the library.

Bickness v. Vergennes School Board, 475 F. Supp. 615 (1979), was a similar dispute. That is, this Vermont board barred two books, The Wanderers and Dog Day Afternoon from the school library and was accused of violating the First Amendment. The Board contended that selection and removal of library books was part of their discretionary authority and provided no Constitutional infringement. Ruling for the board, the district court cited four reasons. First, public education is under the control of state and local authorities. Second, students can buy on an open market, books not in the school library. Third, there is no Constitutional right to access and read from a school library. Fourth, librarians have no independent First Amendment right to control the book collection of a school library under the banner of academic freedom.

These five cases illustrate that boards cannot act arbitrarily or upon scanty standards when they attempt to modify curriculum by way of altering access to some books. Some plaintiffs may seek more open access; others may seek judicial support in greater restriction. Boards have substantial power, and if exercised thoughtfully, openly, and systematically, curriculum construction and modification is a reasonable part of board action, even when it involves aspects of constraint in access to books in the library or in the selection and use within the curriculum itself.

Commentary: Socializing Adolescents

Traditionally, the availability of information has been controlled so that, for example, sixth graders may not have open access to information which is

readily available to tenth graders. Information, particularly information about human interrelationships and behaviors, has been withheld until some appropriate time to reveal it. To the extent that the society's accumulated information was held by readers and writers, there was an easy control of two steps: (1) children could not gain access to restricted information--to society's secrets--until reading skills were developed; (2) if certain books were not purchased or not made readily available, that information could be withheld until that appropriate time to reveal it arrived.

Examination reveals that literature for children follows this pattern, predominantly. Relatively simple concepts are portrayed, and in an idealized view of the world for very young children. The same pattern is generally true of the literature for adolescents, whether it be a book for information or entertainment. It is still less than adult literary fare. Whatever restraints may still be in place for printed literature, those restraints do not hold for pictorial literature. A motion picture demands no skills from the viewer. There is little restraint in attendance. Child and adult alike can see it, and if it reveals social secrets that were traditionally in the adult realm, only, then the child viewers have seen social protrayals that were, formerly, taboo.

The movie mentioned above is only one example of an accessible information source for children and adolescents where they will see behavior by adults which will influence them. Even more pervasive in attitudinal change is television. What house or apartment does not have at least one set? In terms of attitude development--toward self, others, and society--how helpful or detrimental will that T.V. be? Is there evidence that T.V. producers and actors are concerned with what might be called a social conscience? Do they care about the welfare of the viewers?

There is no unanimity about when secrets should be revealed. Some agencies in our society are eager to reveal, because revelation has an

attractiveness just because it is new. It may be shocking. It is certainly saleable. It draws audiences, the lifeblood of pictorial literature. Traditionally, local school boards have not been in the vanguard to open up access to informational sources to children except on a regularized, controlled basis. There is no substantial research literature on the topics of wholesome and positive child development patterns suggesting that such school board behavior, restraining access to information sources that reveal too much too fast, is at fault. Obviously, boards cannot manage local theatres, T.V. in homes, or local bookstores and magazine racks. That lack does not relieve them, however, of managing the local school district--where the children are schooled.

The expectation that the issues surrounding removal of books from a school library by a school board might be resolved in 1982 did not quite happen. That judicial void can be seen in the following case.

Board of Education, Island Trees Union Free School District No. 26 Et Al., Petitioners v. Steven A. Pico, 50 LW 4831 (1982).

Generalization

Examining the issue of library book removal by school board mandate, the USCC stipulated further trial proceedings that should attempt to determine the true motivations of the local school board when that board ordered the removal of ten books.

Description

The Island Trees Board of Education, in Sept. 1975, attended a conference sponsored by Parents of New York United, a politically conservative group concerned about legislation affecting education. From the conference, the board obtained a list of books thought to be objectionable by the group (PONY) and one of the petitioners, Frank Martin. The board later discovered that there were ten of the listed books in the libraries of the junior and

senior high schools. The board issued an unofficial directive to remove the books in question (Slaughter House Five, by Kurt Vonnegut Jr.; The Naked Ape by Desmond Morris; Down These Mean Streets, by Piri Thomas; Best Short Stories of Negro Writers, edited by Langston Hughes; Go Ask Alice, Anonymous; Laughing Boy, by Oliver LaFarge; Black Boy, by Richard Wright; A Here Ain't Nothing But A Sandwich, by Alice Childress; Soul On Ice, by Eldridge Cleaver; A Reader For Writers, edited by Jerome Archer) and deliver them to the board office. The directive became public and the board justified its actions by "characterizing the books as anti-American, anti-Christian, anti-Semitic and just plain filthy" and issued a statement that "It is our duty, our moral obligation, to protect the children in our schools from this moral danger as surely as from physical and medical dangers."

The board later formed a committee to review the books and determine whether any of the books should be retained, a procedure in keeping with the board's policy. The committee's criteria included good taste, relevance, appropriateness for age and grade level. The committee reported in July and recommended that five books be retained and two be removed; the committee was split on proper handling of the other books. The board rejected the recommendation and decided that only one book should be allowed back on the shelf, and one book should be placed on reserve with parents' permission for check-out. The board gave no indication of explicit reasons for the removal of the other books.

The respondents brought suit asking for declaratory and injunctive relief under 42 U.S.C. 1983, against the board, claiming that the action also infringed upon their First Amendment rights. The U.S. District Court found in favor of the board, stating that no constitutional violation exists. The United States Court of Appeals for the Second Circuit reversed the judgment of

the District Court, and remanded the action for trial. The Circuit Court ruled that the burden of proof rested with the board, which had not met that requirement.

Upon appeal, United States Supreme Court recognized two distinct questions. Justice Brennan spoke for the majority: "First, does the First Amendment impose any limitation upon the discretion of the petitioners to remove library books from the Island Trees High School and Junior High School? Second, if so, do the affidavits and other evidentiary materials before the District Court, construed most favorably to respondents, raise a general issue of fact whether petitioners might have exceeded those limitations?" Justice Brennan also explained that if the Court answered either of the two questions negatively, then the Court would hold for the petitioners; but, if the Court answered both questions in the affirmative, then the Court would affirm the judgment of the Court of Appeals, ruling against the local board.

Writing the majority opinion, Justice Brennan declared that a board of education has broad discretion in the mandatory areas of curriculum activities; e.g., textbooks and the educational process in the strict sense. Extended to optional activities, each board must meet the constitutional restrictions of the First Amendment. The First Amendment states the right to self-expression; moreover, the right to express ideas necessarily entails the right to receive those ideas, for without reception the right to express is meaningless. The board's motivation as expressed by them was to protect the children from moral danger. The Court said this in itself was not enough, that censorship here in the form of books removed from accessible shelves must meet constitutional guidelines, e.g., obscenity. The Court of Appeals declared the board action impermissible to restrict on the basis of the desire to suppress ideas. The USCC majority stated that it was permissible to restrict because of vulgarity

or educational unsuitability but not on the basis of suppression of ideas or to impose the political ideas of the local board.

The Supreme Court was more badly split than was revealed in its 5-4 decision. The nine justices wrote seven separate opinions and in a general description, lined up in a 4-4 split, one group granting great discretion to local boards and the other group imposing Constitutional restrictions on local boards. Justice White with the swing vote, voted to remand to the trial court. The nine scholars of law did not render a terribly helpful decision.*

The Court affirmed the Court of Appeals and sent the case back to the District Court for trial to determine the motivation of the board. Apparently, it will be judged permissable for local boards to remove books from a library if they do so to correct educationally unsuitable situations or to protect students from obscenity/vulgarity. Too, the Court intimated that if the board had acted in accord with its own policy, its action would have been upheld.

Actually, the case may not be tried because in August, 1982 the Island Trees Board voted to place the books back in the library on a restricted shelf. Students may check out the books, but at the same time an informing letter will be sent to the student's home, telling parents of the checkout of books held in low esteem by the board. The board ban was rescinded under community pressure to do so. Most cases are of an opposite nature in which parents bring pressure on boards to remove books. Pico was the reverse.

Recommendations

Every board of education should have a statement of philosophy and/or a set of goals, and those made public. From those can be developed a policy

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*In a substantial departure from previous handling of freedom of speech cases that raised the question of prurient interests, the court candidly included quotations of questionable literature. The appendix to Justice Burger's dissenting opinion was the Appendix, summary of excerpts developed earlier by Judge Mansfield.

statement(s) about book procurement. It should be the single dominant guide to every professional person in the district charged to purchase books for the library or for the curriculum. That policy statement should be specific and without ambiguity. It might be refined into a set of administrative procedures, each appropriate to the grade levels of the buildings where the policy is to be implemented.

Another policy should accommodate objections from district patrons. Such a policy must be expanded into a procedure which allows a citizen to follow through from a verbal declaration of "I don't like..." to a specific set of reasons why some particular book should be removed from access by students in the school. The policy should acknowledge the need for a review commiteee, a neutral group from the school district interested in quality education and willing to examine, discuss, and recommend, all of which are time consuming activities.

The entire procedure should be an attempt to provide a forum for complaints in which professional judgments of selection can be examined alongside sincere concerns of district citizens. Pico indicates that some motives for halting book access are not constitutional; other motives are. Procedures that demand discussion, after reception by a board of citizen complaints about specific literature, are the best safeguards against a board becoming a defendant in litigation over the content of books.